81-2199

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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1981

NAPOLEON JAMES,

Petitioner,

VS.

THE STATE OF TEXAS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

NUMBER BELOW: 060-82

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QUESTIONS PRESENTED FOR REVIEW

QUESTION ONE:

DID THE STATE COURT ERR BY FAILING TO TEST THE CONSTITUTIONALITY OF THE INVESTIGATORY DETENTION OF PETITIONER UNDER THE GUIDELINES SET FORTH IN *UNITED STATES v. CORTEZ*, 101 S.CT. 690 (1981)?

QUESTION TWO:

DID THE SEARCH OF PETITIONER'S AUTOMOBILE EXCEED THE CONSTITUTIONALLY PERMISSIBLE SCOPE OF A SEARCH PURSUANT TO AN INVESTIGATORY DETENTION?

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IN THE

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NAPOLEON JAMES,

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VS.

THE STATE OF TEXAS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

NUMBER BELOW: 060-82

JURISDICTION

The Court of Appeals for the Fifth Supreme Judicial District of Texas at Dallas affirmed the judgment of the trial court which found Petitioner guilty of the misdemeanor offense of possession of marihuana. The opinion of the Court of Appeals was delivered on December 10, 1981 (A-1). No motion for rehearing was filed. On January 22, 1982, Petitioner timely filed Cause No. 060-82 with the Court of Criminal Appeals of Texas, seeking a petition for discretionary review of the decision of the Court of Appeals. The Court of Criminal Appeals of Texas refused said petition without written opinion on March 24, 1982 (A-6). No motion for rehearing was filed. Jurisdiction to

review the judgment of the state court by writ of certiorari is conferred on this Court by 28 U.S.C.A. §1257(3).

CONSTITUTIONAL PROVISION INVOLVED

U. S. CONST. amend. IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF CASE

On December 14, 1978, Officer Michael Coker of the Dallas Police Department was driving routine patrol in a marked patrol car. He was in uniform. He was an officer with four and one-half years of experience. While driving through a large apartment complex which consisted of several buildings and which he described as a high offense area where burglaries and criminal mischief had been frequent, Officer Coker heard a sound which he believed to be a large pane of glass breaking. He did not see what caused the sound.

Officer Coker stopped his car and stepped out to investigate. His testimony was that he believed that someone was committing a burglary or a criminal mischief. At this time, he saw Petitioner walking at a fast pace away from the general area from which the sound had come. Officer Coker's opinion was that Petitioner appeared nervous and in a hurry. Petitioner then got into an auto-

mobile and began driving away at what Officer Coker considered to be a high rate of speed for the apartment complex.

Officer Coker got back into his patrol car, pursued and stopped Petitioner. When stopped, Petitioner's automobile was still in the apartment complex. Officer Coker testified that he stopped Petitioner because he believed that a burglary or a criminal mischief had been committed, that Petitioner was a suspect, and that he wanted to detain Petitioner until he could get someone to check the apartments. Officer Coker then exited his car and approached Petitioner's automobile. As he approached, he saw Petitioner lean forward and lower his shoulder, which appeared to Officer Coker as if Petitioner had dropped something on the floorboard. At this time, Officer Coker became concerned for his safety, whereupon he returned to his car and called for cover. When a cover officer arrived, Officer Coker again approached Petitioner's automobile and asked Petitioner to step out. Petitioner did so, and Officer Coker escorted him to the rear of his automobile. While Petitioner stood at the rear of his automobile, accompanied by the cover officer, Officer Coker walked back to the front of the automobile, shined a light in the automobile where Petitioner had leaned forward, and found a plastic bag containing marihuana on the floorboard. Petitioner was then placed under arrest for possession of marihuana and transported to the Dallas city jail. Other than a phone call to the dispatcher asking whether any reports of burglaries had come in from that location, no further investigation of the suspected burglary or criminal mischief was done.

The federal questions sought to be reviewed were raised in the trial court by the attorneys for Petitioner

objecting to the stop of Petitioner and the search of his automobile on Fourth Amendment grounds. This was done during the course of the trial, when Officer Coker testified that he stopped Petitioner and when he testified that he searched Petitioner's automobile. The trial court overruled both of Petitioner's Fourth Amendment objections. The federal questions sought to be reviewed were also raised in the appellate court. See Appendix A-1 through A-6. The federal questions sought to be reviewed were timely and properly raised so as to give this Court jurisdiction to review the matter on writ of certiorari.

ARGUMENT

I.

DID THE STATE COURT ERR BY FAILING TO TEST THE CONSTITUTIONALITY OF THE INVESTIGATORY DETENTION OF PETITIONER UNDER THE GUIDELINES SET FORTH IN *UNITED STATES v. CORTEZ*, 101 S.CT. 690 (1981)?

The state court failed to test the constitutionality of the investigatory detention of Petitioner under the guidelines set forth in *United States v. Cortez*, 101 S.Ct. 690 (1981). The court simply held that the investigatory detention of Petitioner was lawful based upon the reasonableness of the police officer's suspicions.

In *United States v. Cortez*, supra at 695, this Court wrote:

> Courts have used a variety of terms to capture the elusive concept of what cause is sufficient to authorize police to stop a person. Terms like "articulable reasons" and "founded suspicion" are not self-defining; they fall short of providing clear guidance dispositive of the myriad factual situations that arise. But the essence of all that has been written is that the totality of circumstances — the whole picture — must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.

The Court then went on to explain the essential elements of "particularized suspicion". First, the officer's assessment

must be based upon all the circumstances. Second, the officer's assessment must raise a suspicion that the particular individual being stopped is engaged in wrongdoing. See *United States v. Cortez*, supra. The Court of Criminal Appeals of Texas has further stated, "A corollary to this is that the 'criminal activity' suspected must likewise be 'particularized'." *Hull v. State*, 613 S.W.2d 735, 739, n.10 (Tex. Crim. App. 1981).

By failing to test the constitutionality of the investigatory detention of Petitioner under the guidelines set forth in *United States v. Cortez*, the state court has decided a federal question in a way in conflict with a decision of this Court. The constitutionality of the investigatory detention of Petitioner should have been subjected to the "particularized suspicion" test and to no other test. The Court of Criminal Appeals of Texas has recognized, "That a generalized suspicion will not suffice, is no longer open to debate. For *the most recent, as well as potent*, affirmation in this regard to date has been made in *United States v. Cortez* (Citation omitted and emphasis added)." *Hull v. State*, 613 S.W.2d 735, 739 (Tex. Crim. App. 1981). The "particularized suspicion" test set forth in *United States v. Cortez* is, therefore, the minimum standard of reasonableness in this area of Fourth Amendment law. The courts of Texas can give more protection to individual citizens in this area, but they cannot give less. By testing the constitutionality of the investigatory detention of Petitioner in the manner in which it did, and by failing to test the constitutionality of said detention with the "particularized suspicion" test, the state court gave less protection to Petitioner than is required by this Court in *United States v. Cortez*.

II.

DID THE SEARCH OF PETITIONER'S AUTOMOBILE EXCEED THE CONSTITUTIONALLY PERMISSIBLE SCOPE OF A SEARCH PURSUANT TO AN INVESTIGATORY DETENTION?

The state court held:

> Although neither the investigatory detention nor . . . (Petitioner's) "dropping" motion may have been sufficient to authorize a search, we conclude that the circumstances reasonably justified the officer in walking back to the vehicle and placing himself in a position to observe whatever was in plain view. We hold that such observation did not constitute an unreasonable search in violation of . . . (Petitioner's) rights under the Fourth Amendment, and, therefore, his motion to suppress was properly overruled.

Appendix A-4 through A-5. Although the state court did not say that the investigatory detention alone was sufficient to authorize a search, it did hold that, while Petitioner was being detained for investigation, the officer was reasonably justified in walking back to the automobile to place himself in a position to observe whatever was in plain view. The state court, therefore, has decided an important question of federal law which has not been, but should be, settled by this Court, and that is, "What is the constitutionally permissible scope of a search of an automobile pursuant to an investigatory detention of an occupant of the automobile?" Once Petitioner was detained at the rear of his automobile, should the police officers have been limited to securing their safety by searching only

Petitioner's person and not the automobile? If so, was there any justification for the police officer in walking back to the front of the automobile to place himself in a position to observe whatever was in plain view, or should the cover officer have remained with Petitioner while Officer Coker checked the apartments? Was the discovery of the marihuana a plain view observation given the fact that the police officer walked back to the front of the automobile with the purpose to discover whatever there was on the floorboard of Petitioner's automobile?

It is Petitioner's position that the police officers did not have the right to even conduct a pat down search of his person. There is no evidence in the record to show that the police officers had reason to believe that Petitioner presented a danger to them or to others once he was removed from his automobile and positioned at the rear of the automobile, and there is no indication in the record that Officer Coker could not have safely completed his burglary or criminal mischief investigation while Petitioner was detained at the rear of the automobile. All indications are that Petitioner was securely detained. See *Terry v. Ohio*, 392 U.S. 1 (1968).

Furthermore, furtive gestures, combined with an officer's statement that he had a fear for his safety, have been held in Texas to be insufficient to support a search of an automobile for weapons. In Texas, the facts of each case must show that the officer had reasonable grounds to believe he was in danger to justify a search of the vehicle. *Branch v. State*, 593 S.W.2d 324 (Tex. Crim. App. 1980); *Beck v. State*, 547 S.W.2d 266 (Tex. Crim. App. 1976); *Keah v. State*, 508 S.W.2d 836 (Tex. Crim. App. 1974); *Brown v. State*, 481 S.W.2d 106 (Tex. Crim. App. 1972). Although

Officer Coker may have acted reasonably in calling for cover, the record does not contain facts which show that he had reasonable grounds to believe he was in danger so as to justify a search of Petitioner's automobile.

It follows, therefore, that there was no justification for the police officer to walk back to the front of Petitioner's automobile to view whatever was on the floorboard of the automobile. The "plain view" exception to the warrant requirement requires that the police officer must have a prior justification for his intrusion at a time when he inadvertently comes across a piece of incriminating evidence. *Coolidge v. New Hampshire*, 91 S.Ct. 2022 (1971). Not only was there no justification for Officer Coker's intrusion into Petitioner's automobile, but he admitted that he walked back to the front of the automobile to discover what was on the floorboard, and, therefore, his discovery was not inadvertent but intentional.

CONCLUSION

For the reasons given, a writ of certiorari should issue to review the judgment of the state court.

Respectfully submitted,

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COURT OF APPEALS
FIFTH SUPREME JUDICIAL DISTRICT OF TEXAS
AT DALLAS

NO. 05-81-00134-CR

NAPOLEON JAMES ..... *Appellant*

VS.

THE STATE OF TEXAS ..... *Appellee*

FROM A COUNTY COURT
OF DALLAS COUNTY, TEXAS

BEFORE CHIEF JUSTICE GUITTARD AND JUSTICES STEPHENS AND VANCE

OPINION BY CHIEF JUSTICE GUITTARD

FILED DECEMBER 10, 1981

Napoleon James was convicted of possession of marijuana. The trial was before the court without a jury, and punishment was assessed at a $200 fine and one day in jail.

Appellant contends that at the time the initial investigatory stop was made the police officer lacked "specific articulable facts" which would justify a temporary detention of appellant for investigation. Appellant also asserts that the officer's subsequent "search" of appellant's car was unlawful, and, therefore, the fruits of that search should have been suppressed. We overrule these contentions for the reasons stated.

The record reflects that on December 14, 1978, Officer Michael Coker was patrolling an apartment complex in an area where burglaries and criminal mischief had been frequent. While driving through the complex, he heard the sound of a large pane of glass breaking. As the officer stepped out of his patrol car to investigate, he saw appellant walking at a rapid pace away from the area from which the sound had come. Appellant got into his utomobile and drove away at what the officer considered to be a high rate of speed for an apartment complex. The officer stopped appellant's car. As the officer approached, he saw appellant lean forward and lower his shoulder as if he were dropping something on the floorboard. Fearing that appellant might have a weapon, the officer returned to his vehicle and called for assistance. When another officer arrived, appellant was requested to move to the rear of his car. Officer Coker then walked back to appellant's car, shined his light into the floorboard, and saw a plastic bag containing marijuana. He then placed appellant under arrest.

1. Investigatory Detention

Appellant first asserts that the initial stop was unlawful. He argues that the officer's conclusions were based on an inarticulable hunch and that his own actions were as consistent with innocent activity as with criminal activity.

We agree with appellant that the circumstances were not sufficient to justify an arrest on suspicion, as authorized by article 14.03 of the Texas Code of Criminal Procedure (Vernon 1977). Nevertheless, the law is well settled that circumstances short of probable cause for arrest may justify the temporary detention of a suspect for purposes of investigation. *Adams v. Williams*, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed. 2d 612 (1972). The totality of the circumstances

surrounding the incident must be examined to determine whether the detention was reasonable. *Shaffer v. State*, 562 S.W.2d 853 (Tex. Crim. App. 1978); *Armstrong v. State*, 550 S.W.2d 25 (Tex. Crim. App. 1976). The intrusion cannot be justified unless the officer has knowledge of specific articulable facts which, in light of his experience and personal knowledge, together with other inferences from those facts, would reasonably warrant the intrusion. *U.S. v. Brignoni-Ponce*, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed. 2d 607 (1975). The officer must reasonably suspect that some criminal activity is occurring or has occurred and that the detained person is connected with the activity. If the events giving rise to the detention are as consistent with innocent activity as with criminal activity, then the detention is unlawful. *Shaffer, supra; Armstrong, supra.*

In the instant case, we conclude that Officer Coker's suspicions were reasonable and that he had specific articulable facts to justify an investigatory detention of appellant. The officer was patrolling a high crime area, particularly susceptible to burglary and criminal mischief. *See Amorella v. State*, 554 S.W.2d 700 (Tex. Crim. App. 1977). The officer testified that he heard the sound of a large glass pane breaking and that he saw appellant walking away from the same area at a rapid pace. He further testified that appellant appeared to be nervous, as if he were in a hurry. The officer stated that no one else was in the area at the time he heard the sound of the breaking glass. The officer also testified that appellant left the scene in his car, driving at a speed which the officer considered to be excessive for an apartment complex. In light of these facts, we conclude that the officer could have reasonably suspected that either attempted burglary or criminal

mischief had occurred and that appellant was connected to the activity. Consequently, we hold that the officer was justified in detaining appellant temporarily for investigation.

2. Seizure of the Marijuana

Appellant also contends that his motion to suppress should have been sustained because the marijuana was obtained as a result of an illegal search. He argues that even if the investigatory detention was justified, the officer had no right to make a search beyond the area under appellant's immediate control, and therefore, after appellant had been removed from the automobile, the officer was not justified in returning to search it.

We conclude that the officer's actions did not constitute such a "search" as to require a warrant because the marijuana was in plain view. An officer's use of a flash light to aid his vision does not transform an otherwise plain-view observation into an illegal search. *United States v. Arredondo-Hernandez*, 574 F.2d 1312 (5th Cir. 1978); *Onofre v. State*, 474 S.W.2d 699, 701 (Tex. Crim. App. 1972). The marijuana in question was in a plastic "baggie," and apparently it was recognized by the officer before seizure. In this respect the case differs from *Howard v. State*, 599 S.W.2d 597 (Tex. Crim. App. 1979), in which the contraband was in plain view but was not identified as such until after seizure.

Although neither the investigatory detention nor appellant's "dropping" motion may have been sufficient to authorize a search, we conclude that the circumstances reasonably justified the officer in walking back to the vehicle and placing himself in a position to observe what-

ever was in plain view. We hold that such observation did not constitute an unreasonable search in violation of appellant's rights under the Fourth Amendment, and, therefore, his motion to suppress was properly overruled.

Appellant insists that the facts of this case cannot be distinguished from those in *Branch v. State*, 599 S.W.2d 324 (Tex. Crim. App. 1979). In that case, however, the contraband was not discovered until after an illegal search had taken place. Although the contraband was observed in plain view after the search, the majority opinion treats the discovery as a result of the illegal search. The majority opinion does not overrule the cases cited in the dissenting opinion for the rule that to observe contraband in plain view is not a search. *See Sherer v. State*, 502 S.W.2d 143 (Tex. Crim. App. 1973); *Coleman v. State*, 500 S.W.2d 472 (Tex. Crim. App. 1973). Neither do we read *Branch* as holding that observation of so much of the interior of an automobile as may be plainly viewed from the outside is such a search as to require a legal arrest, a legal search warrant, or other justifying circumstance.

Affirmed.

/s/ Clarence A. Guittard,
Chief Justice

COURT OF CRIMINAL APPEALS OF TEXAS
CLERK'S OFFICE
(Filed March 24, 1982)

Austin, Tex. MAR 24, 1982

I have been instructed to advise that the Court has this day refused the appellant's petition for discretionary review in Cause No. 060-82, Napoleon James.

Sincerely yours,

THOMAS LOWE, Clerk

Office-Supreme Court, U.S.
FILED
OCT 14 1982
ALEXANDER L. STEVAS,
CLERK

NO. 81-2199

IN THE UNITED STATES SUPREME COURT OCTOBER TERM 1981

NAPOLEON JAMES,

Petitioner

V.

THE STATE OF TEXAS,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE TEXAS COURT OF CRIMINAL APPEALS

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. WHETHER THE STOP OF PETITIONER WAS LAWFUL UNDER *TERRY V. OHIO*, 392 U.S. 1 (1968), AND ITS PROGENY.

II. WHETHER THE SEIZURE OF INCRIMINATING EVIDENCE WAS IN "PLAIN VIEW", SO AS TO EXEMPT IT FROM THE WARRANT REQUIREMENT.

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NO. 81-2199

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM 1981

NAPOLEON JAMES,

Petitioner

V.

THE STATE OF TEXAS,

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE TEXAS COURT OF CRIMINAL APPEALS

RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

COMES NOW THE STATE OF TEXAS, Respondent herein, by and through her attorney, the Attorney General of Texas, and respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the decision of the Texas Court of Criminal Appeals in this case.

OPINION BELOW

The opinion of the Texas Court of Appeals and notification of the denial of discretionary review by the Texas Court of Criminal Appeals are attached to the Petition for Writ of Certiorari as Appendix.

JURISDICTIONAL STATEMENT

Petitioner was convicted by a county court in Dallas County, Texas, of misdemeanor possession of marijuana. That conviction was affirmed by the Texas Court of Appeals, Fifth Supreme Judicial District, in No. 05-81-00134-CR on December 10, 1981. The Texas Court of Criminal Appeals denied discretionary review on March 24, 1982. This Court has jurisdiction to review the judgment by certiorari pursuant to 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST. amend. IV

The right of the people to be secure in their persons houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF CASE

The statement of facts set out in the Petition, pages 2-3, is substantially correct.

REASONS WHY THE WRIT SHOULD BE DENIED

I. THE TEXAS COURT OF APPEALS' HOLDING THAT THE INVESTIGATIVE STOP OF PETITIONER WAS LAWFUL UNDER *TERRY V. OHIO*, 392 U.S. 1 (1968), DOES NOT CONFLICT WITH THE DECISIONS OF THIS COURT.

The fourth amendment to the United States Constitution, applicable to the States through the fourteenth amendment, generally requires law enforcement officials

to obtain a warrant, issued upon a showing of probable cause, before conducting a search. Since *Terry v. Ohio*, 392 U.S. 1 (1968), however, this Court has recognized that under some circumstances, law enforcement officers may detain an individual without arresting him and conduct a limited search of that person or the area without a warrant, and without probable cause. Whether a warrant is required in a given case depends on several factors, including the length of the detention, and the degree of intrusion into the subject's privacy.

The most recent pronouncements by this Court of the doctrine announced in *Terry v. Ohio* have been in *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975), and *United Sttes v. Cortez*, 449 U.S. 411 (1981). The guiding standard for a investigatory stop, short of arrest based on probable cause, is the presence of a reasonable suspicion that the subject is engaging in criminal activity. *Brignoni-Ponce, supra.* An officer must have a particularized and objective basis for suspecting the particular person stopped of criminal activity. *Cortez, supra.* The legality of the stop is to be evaluated in light of all the circumstances.

Petitioner complains that the Texas Court of Appeals erred by not analyzing the facts of his case in accordance with *United States v. Cortez.* He does not specify exactly in what way the court's analysis is deficient. Nevertheless, it is clear that the court correctly applied the "investigative detention" doctrine as it has developed since *Terry v. Ohio. Brignoni-Ponce* mandates that the detaining officer must have knowledge of specific, articulable facts which, in light of his knowledge and experience, lead to a reasonable suspicion that the detainee is connected with the suspected criminal activity. Here, the officer was patrolling what he knew to be a high-crime area, particularly susceptible to burglaries and criminal mischief. He heard the sound of breaking glass nearby and observed Petitioner, who appeared to be ner-

vous, walking rapidly away from the vicinity of the sound. He then observed Petitioner driving away from the scene at a high rate of speed. No one else was in the area. The police officer, who had several years' experience, thus articulated the specific facts and inferences which led to his decision to stop Petitioner for a brief conversation. The Court of Appeals, applying these facts to the *Brignoni-Ponce* doctrine, determined that the officer's suspicion was reasonable, and that the initial stop was lawful under the constitution.

It is true that *Cortez* is not cited in the opinion of the court of appeals, but that circumstances alone does not constitute a conflict with the *Cortez* holding. *Cortez* does not limit the doctrine of Brignoni-Ponce; rather, it reaffirms the constitutionality of a detention short of arrest under these circumstances. The only modification of *Brignoni-Ponce* in *Cortez* is this Court's explicit recognition that facts and observations which appear meaningless to an untrained person may be sufficient to justify a detention when evaluated in light of special training and experience. Nothing in *Cortez* suggests that the initial stop here was unlawful.

Petitioner makes much of the requirement in *Cortez* that the officer's suspicion be "particularized" as to the connection between the detainee and some criminal activity, and dicta in a Texas case to the effect that the suspected criminal activity must likewise be particularized. *Hull v. State*, 613 S.W. 2d 735, 739 n.10 (Tex. Crim. App. 1981). Again, it is not clear in what way Petitioner considers these concepts to have been misapplied in his case. The Texas courts have consistently required that an investigative stop must be justified by reasonable suspicion of a particular person, and have held that random checks do not meet the *Brignoni-Ponce* standard. *Hull v. State, supra; Armstrong v. State*, 550 S.W. 2d (Tex. Crim. App. 1976).

Here, the officer's testimony indicates that his suspicion was centered on Petitioner; there was no one else in the area. To the extent that the footnote in *Hull* imposes a more stringent standard for "particularized suspicion" than the fourth amendment does, it is a matter of state law. In any case, that requirement too appears to have been met. The officer suspected that Petitioner had been involved in burglary or criminal mischief at a specified time and location. The fact that he was later charged with a different crime does not change the character of the initial stop.

Petitioner does not allege that the Texas courts consistently refuse to abide by this Court's decisions in the area of investigative detentions. Clearly, Texas has followed *Brignoni-Ponce* and *Cortez*. *See, e.g., Williams v. State*, 621 S.W.2d (Tex. Crim. App. 1981); *Galitz v. State*, 617 S.W.2d 949 (Tex. Crim. App. 1981); *Hull, supra*. He apparently complains only that the reviewing court in his case applied the law incorrectly. Whether true or not, it does not raise an issue of constitutional dimensions; this Court does not sit to correct individual injustices. The writ should be denied.

II. THE STATE COURT'S DETERMINATION THAT THE EVIDENCE SEIZED WAS WITHIN THE "PLAIN VIEW" DOCTRINE DOES NOT RAISE A QUESTION WORTHY OF THIS COURT'S REVIEW.

After Petitioner was lawfully stopped, the officer saw him lean forward and drop his shoulder, as if he were placing something on the floorboard of the car. Concerned for his safety, the officer called for cover and only after another officer arrived did he walk back to the side of the car and look in. Petitioner concedes that the marijuana seized was in plain view from the officer's vantage point at the side of the car. Hence, it was not necessary to enter the car, look under the seats or in the glove compartment, or open any containers in the car.

It has long been settled that observation of items in plain view does not constitute a search within the meaning of the fourth amendment, and seizure of such items does not require a warrant or probable cause. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *Harris v. United States*, 390 U.S. 234 (1968). Petitioner asserts, however, that the officer's decision to walk back around the car after Petitioner was out of the car transformed the observation into a search, so as to trigger the fourth amendment protections. According to his theory, the officer's intentional act violated the requirement in *Coolidge, supra*, that discovery of evidence in plain view be inadvertant. This requirement, however, was met when the officer properly stopped Petitioner on reasonable suspicion. At that point, he had the requisite justification for being near the car and in a position to observe whatever was in plain view.

The cases cited in the Petition to the effect that Petitioner's furtive gestures were not sufficient to justify a search of the automobile are not relevant here. This case does not involve a search, but merely a non-intrusive observation of evidence which would have been observable by any passer-by. The state court concluded that the officer's actions were reasonable and proper under all the circumstances. This determination does not indicate a conflict with current fourth amendment law, nor does it raise a new and undecided issue. It is merely an application of current law to the facts of a particular case, which is insufficient to justify this Court's exercise of jurisdiction.

CONCLUSION

Petitioner's claim represents nothing more than his dissatisfaction with the state court's decision. Since it does not raise a substantial constitutional question, this Court should decline to review it.

WHEREFORE, PREMISES CONSIDERED, Respondent respectfully prays that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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